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July 25, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Ex Parte Communication in CC Docket Nos. 95-185 and 96-98

Pursuant to Section 1.1206 of the Commission's rules, Comcast Cellular Communications, Inc. ("Comcast"), by its attorneys, hereby submits this written *ex parte* communication in the above-captioned proceedings to address two matters of vital import to the commercial mobile radio service marketplace and the public interest. First, the Commission must confirm that imposition of incumbent LEC local calling areas and "access" charges upon competing CMRS providers is contrary to the Telecommunications Act of 1996 (the "1996 Act"). The Commission also must find that imposition of ILEC access charges for traffic the CMRS provider treats as local would result in serious anticompetitive harm, hamper the realization of the Commission's pro-competitive goals for the CMRS marketplace and increase cellular rates. Second, the Commission must adhere to the fundamental goals of the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act") and the 1996 Act by establishing incremental cost-based rates to govern mutual and reciprocal compensation for the transport and termination of traffic between ILECs and CMRS providers. It is essential that *all* CMRS providers be included in any interim relief measures the Commission may adopt in CC Docket No. 96-98 to remedy existing anticompetitive abuses in the landline LEC-to-CLEC context, regardless of the status of their present interconnection arrangements.

I. APPLICATION OF A LANDLINE LOCAL CALLING AREA CONCEPT AND ACCESS CHARGES ON CMRS INTERCONNECTION IS CONTRARY TO THE PUBLIC INTEREST.

Both the Budget Act of 1993 and the 1996 Act endorse the peer network relationship between ILECs and CMRS providers and seek to advance actual facilities-based competition. The 1996 Act requires that the rates governing mutual and reciprocal compensation for transport and termination of traffic between such carriers be based on the long-run incremental cost ("LRIC") of providing such service. 47 U.S.C. §§ 332(c), 251(b)(5), 252(d)(2). Because of this peer network relationship and the co-carrier status of CMRS providers, imposition of end-user access charges on LEC-to-CMRS interconnection arrangements for calls beyond the landline LEC local calling area is inappropriate. Under this proposal, for example, if Comcast Cellular were to originate a cellular call in Philadelphia, Pennsylvania and terminate it on Bell Atlantic's network in New Brunswick, New Jersey, Bell Atlantic would charge Comcast Cellular for an

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interLATA toll call even though the call, is a purely local call, entirely within Comcast Cellular's contiguous footprint.

A local calling area access charge thus would improperly introduce an additional charge into the co-carrier relationship contrary to the Budget Act and the 1996 Act's requirement that CMRS providers pay only the incremental cost for the mutual and reciprocal exchange of traffic for call transport and termination. Furthermore, a local calling area access charge would deprive facilities-based CMRS providers of their co-carrier status and improperly treat them as end users. Thus, proposals to interpose a local calling area "access" charge on CMRS providers would undermine the growth of a wireless and wired "network of networks" and leave in its place an antediluvian system of ILEC monopoly profit-taking. The ILECs should not be rewarded for their attempts to gerrymander uneconomic and improper access charges.

Both Congress and the Commission, moreover, have long recognized that wireless local exchange and exchange access operations, by their very nature, must be allowed unfettered discretion to cover wide-area locations ranging from PCS Major Trading Areas to cellular MSAs. A local calling area "access charge" concept would balkanize CMRS operations into ILEC fiefdoms and introduce uneconomic charges into LEC-to-CMRS interconnection arrangements contrary to the dictates of the Budget Act and the 1996 Act. The Commission must therefore rule that the local calling area "access" proposal is contrary to the public interest.^{1/}

II. ANY INTERIM RELIEF AFFORDED LEC-TO-CLEC INTERCONNECTION ARRANGEMENTS IN DOCKET 96-98 ALSO MUST BE MADE AVAILABLE TO CELLULAR PROVIDERS IN DOCKET 95-185.

If the Commission adopts an interim rate to remedy anticompetitive abuses in LEC-to-CLEC interconnection arrangements in CC Docket No. 96-98 pending voluntary negotiation or Commission establishment of a permanent rate, cellular providers also must receive the benefits of any such interim relief measures. Any attempt to distinguish between parties "with contracts" and those under "tariff" has as its design the punishment of cellular carriers simply for being existing wireless carriers. The endemic anticompetitive abuses in existing one-sided LEC-to-cellular interconnection arrangements provide a compelling rationale for extending any interim and pro-competitive relief provided to competing landline LECs to cellular licensees. It would be a perverse result indeed to single out cellular licensees for exclusion from interim relief when the Commission itself acknowledged that the purpose of initiating Docket No. 95-185 was to correct anticompetitive abuses in existing LEC-to-cellular interconnection by adopting such interim relief measures.

It is un rebutted that cellular licensees have paid and continue to pay exorbitant termination rates to the ILECs and, contrary to principles of mutual compensation, are not

^{1/} In addition, neither Notice included any reasonable notice of a potential change in FCC policy on the issue of calling scope and LEC call rating.

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compensated at all in return. Cellular licensees therefore are entitled to any interim relief the Commission may adopt to remedy these anticompetitive measures. Insofar as existing LEC-to-cellular interconnection arrangements are one-sided contracts of adhesion without any mutual compensation, moreover, it is well-settled as a matter of law that a regulatory agency may abrogate these contracts as contrary to the public interest in order to implement interim relief.^{2/}


The 1996 Act's requirement that mutual compensation for transport and termination of traffic be based on incremental cost also mandates that cellular licensee as telecommunications carriers be allowed to share in any interim remedy pending establishment of a permanent interconnection rate. If the Commission determines that establishing an interim rate would facilitate the introduction of cost-based mutual compensation for transport and termination of CLEC traffic, the Commission must extend such a finding to cellular licensees as well. *See* 47 U.S.C. § 251(i). Moreover, to exclude only cellular licensees from any interim relief measures to be adopted would be particularly unconscionable when it was Comcast Cellular who proposed interim bill and keep over two years ago and thereby galvanized the pro-competitive interconnection reform efforts underlying the Commission's decision to initiate Docket No. 95-185 in the first place.

III. CONCLUSION

The Commission's implementation of the pro-competitive interconnection policies set forth in the Budget Act and the 1996 Act are vital to the development of actual facilities-based competition and the rapid deployment of wireless technologies to the nation. The Commission must confirm that proposals to establish local calling area access charges are contrary to the public interest, will stifle wireless competition and are in essence no more than misguided, anticompetitive attempts to maintain revenues that should be put at risk by the advent of competition. Finally, the Commission must follow through on its pro-competitive intent in initiating Docket No. 95-185 by extending to existing LEC-to-cellular and future LEC-to-CMRS interconnection arrangements any interim and other relief accorded LEC-to-CLEC interconnection arrangements in Docket No. 96-98.

Respectfully submitted,

COMCAST CELLULAR COMMUNICATIONS, INC.


Leonard J. Kennedy

Its Attorney

^{2/} *See Lincoln Tel. & Tel. v. FCC*, 659 F.2d 1092, 1107-8 (D.C. Cir. 1981); *Exchange Network Facilities for Interstate Access*, 93 F.C.C.2d 739, 758-763 (1983), *aff'd mem. sub nom.*, *GTE Sprint Communications Corp. v. FCC*, 733 F.2d 966 (D.C. Cir. 1984); *Western Union Telegraph Co.*, 1 FCC Rcd 829, 833-4 (1986).